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APPEARANCES:

PLAINTIFFS:

MARGOT POLIVY, ESQ.  
1532 Sixteenth Stret, N.W.  
Washington, D.C. 20036

DEFENDANTS:

DONALD W. HARDEMAN, JR., ESQ.  
RICHARD J. SUAREZ, ESQ.  
116 West Flagler Street  
Miami, Florida 33130

REPORTER:

ROBERT A. RYCKOFF  
Fifth Floor  
301 North Miami Avenue  
Miami, Florida 33120

1 Communications Commission?

2 A Yes, primarily before the Federal Communications  
3 Commission.

4 Q You are familiar with its are rules and regulations?

5 A I am, sir.

6 Q How long have you held this specialty, sir?

7 A I started in 1967, and as soon as I acquired it through  
8 the experience of practice. So for a significant period of  
9 years.

10 Q Sir, would you outline for us briefly how television  
11 channels are allocated?

12 MS. POLIVY: Your Honor, I am going to objection.

13 How television channels are allocated are a matter  
14 within the rules and regulations of the Federal  
15 Communications Commission. They are published.

16 If this witness is being offered for the purpose of  
17 telling you what the law is or what the regulations are --

18 THE COURT: I take it that is the purpose?

19 MR. HARDEMAN: Yes, Your Honor.

20 THE COURT: He is being offered as an expert  
21 witness in the area of the law of telecommunications and  
22 broadcast regulations by the F.C.C.?

23 MR. HARDEMAN: Yes, he is, Your Honor.

24 MS. POLIVY: Your Honor, if --

25 THE COURT: Let me begin by asking is there a

1 challenge to his qualifications?

2 MS. POLIVY: Yes, Your Honor, on two counts.

3 I do challenge it. May I be heard?

4 THE COURT: Sure.

5 MS. POLIVY: May I ask Mr. Hummers --

6 THE COURT: You want to voir dire him?

7 MS. POLIVY: Just one question.

8 THE COURT: Let me ask: Have you completed your  
9 foundational questions?

10 MR. HARDEMAN: Yes, I have, Your Honor.

11 THE COURT: All right.

12 VOIR DIRE EXAMINATION

13 BY MS. POLIVY:

14 Q Mr. Hummers, have you served as communications counsel  
15 to the defendant in this case in any other proceedings?

16 A I have served as counsel to Guy Gannett with regard to  
17 the tall tower litigation, with regard to the location of  
18 the Orlando AM station.

19 Q You represented them as counsel? You represented  
20 Gannett as counsel?

21 A I was retained by Gannett. Gannett was represented by  
22 other counsel in the proceeding. I participated as counsel  
23 based upon my expertise.

24 Q Do you recall being deposed in this proceeding, Mr.  
25 Hummers?

1 Q Section 73.635, Mr. Hummers, how does that reflect the  
2 F.C.C.'s policy concerning competition?

3 MS. POLIVY: Your Honor, I object.  
4 That rule speaks for itself.

5 THE COURT: The objection to that question is  
6 sustained.

7 MR. HARDEMAN: Your Honor, I don't have any other  
8 questions of Mr. Hummers.

9 THE COURT: Do you have any cross?

10 MS. POLIVY: Yes, I do, Your Honor.

11 CROSS EXAMINATION

12 BY MS. POLIVY:

13 Q Hello, Mr. Hummers.

14 A Good evening, Ms. Polivy.

15 Q Mr. Hummers, you have 73.635 in front of you, do you  
16 not?

17 A Yes, I do.

18 Q I would ask you to take a look at it and tell me if that  
19 rule does not require that three conditions precedent be  
20 present before the common antenna site rule (phonetic)  
21 applies?

22 A Yes. Conditions A, B and C.

23 Q And they must all be present, is that correct?

24 A That's correct.

25 Q You spoke in your direct testimony pertaining to the

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

JOSEPH REY, LETICIA JARAMILLO, ) CASE NO. 90-2554-CIV-  
and ESPERANZA REY-MEHR, as ) Marcus  
General Partners of RAINBOW )  
BROADCASTING COMPANY, a Florida )  
Partnership, )

Plaintiffs, )

vs. )

GUY GANNETT PUBLISHING CO., )  
Individually, GUY GANNETT )  
PUBLISHING CO., doing business )  
as GANNETT TOWER CO., GUY )  
GANNETT PUBLISHING CO., doing )  
business as BITHLO TOWER COMPANY, )  
GANNETT TOWER COMPANY, )  
Individually, MPE TOWER, INC., )  
Individually, and GANNETT TOWER )  
COMPANY and MPE TOWER, INC., as )  
General Partner and copartners )  
doing business as BITHLO TOWER )  
COMPANY, a Florida General )  
partnership, )

Defendants. )

Miami, Florida  
January 23, 1991  
7:50 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE STANLEY MARCUS

APPEARANCES:

PLAINTIFFS: MALCOLM H. FROMBERG, ESQ.  
ELSA ALVAREZ, ESQ.  
420 South Dixie Highway  
Third Floor  
Coral Gables, Florida 33146

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116 West Flagler Street  
Miami, Florida 33130

REPORTER:

ROBERT A. RYCKOFF  
Fifth Floor  
301 North Miami Avenue  
Miami, Florida 33120

ATTACHMENT I

Letter, dated October 19, 1990  
from Malcolm H. Fromberg  
to Gannett Tower Company  
(appears as pages 15-16 in RBC/RBL Exhibit 7)

LAW OFFICES  
**FROMBERG, FROMBERG AND LEWIS**  
A PROFESSIONAL ASSOCIATION

SUITE 300  
420 SOUTH DIXIE HIGHWAY  
CORAL GABLES, FLORIDA 33146  
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HALLANDALE, FLORIDA 33009  
TELEPHONE: (305) 458-3369  
TELEFAX: (305) 458-0577

October 19, 1990

PLEASE REPLY TO:

Coral Gables

GANNETT TOWER COMPANY  
c/o Guy Gannett Publishing Company  
390 Congress Street  
P.O. Box 1460  
Portland, ME 04104

Attention: James Baker

RE: Rainbow Broadcasting lease with  
Bithlo Tower Company dated 1/6/86

Dear Mr. Baker:

This is to advise you that my clients, Rainbow Broadcasting/65, intend to proceed with the installation of their antenna on Bithlo Tower on the top antenna slot of the two slots designated in Exhibit "C" of the Lease Agreement. We reiterate that the Lease Agreement limits Bithlo to two TV channels on the tower in the slots shown in Exhibit "C", and that the radiation center of the top slot is at a height of approximately 1,493 feet above the ground in accordance with the Engineering Exhibit Application for Modification of Television Construction Permit filed for Rainbow Broadcasting by Jules Cohen and Associates dated February 3, 1986 (a copy of which was provided to you in accordance with the Lease Agreement). Since it is apparent that you intend to lease space within the aperture of Rainbow's top slot to Press Broadcasting Co./Channel 18 (a direct competitor of Rainbow), you are hereby again advised that we consider such action to be an anticipatory breach of Rainbow's Lease Agreement. Your argument that more than one channel can occupy the top space runs contrary to the clear language of the Lease Agreement and the clear intent of the parties.

This is further to confirm that with regard to the plans for construction of the transmitter building, Rainbow designates the middle room, based upon the representation of Mr. Edwards that the bridge connecting the transmitter rooms to the tower will be abutting the middle room, thus making the middle room the closest location to the bridge.



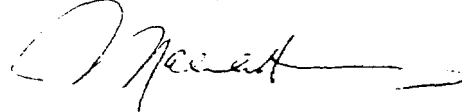
Mr. James Baker  
GANNETT TOWER COMPANY  
October 19, 1990  
Page Two

We also wish to reaffirm that the air conditioning unit will be floor-mounted and not mounted on the roof.

Finally, we reaffirm our reservation of the remaining space available in the generator room for auxiliary power.

Thank you for your attention.

Very truly yours,



MALCOLM H. FROMBERG

MHF:plm

CC: Richard Edwards  
John Flaherty, Esq.

(BCC: Margaret Poliby, Esq.)

ATTACHMENT J

Letter, dated July 3, 1996  
from Margot Polivy  
to the Honorable Joseph Chachkin,  
Harry F. Cole, Esquire, and David Silberman, Esquire

## RENOUF & POLIVY

1532 SIXTEENTH STREET NW • WASHINGTON DC 20036 • (202) 265-1807

3 July 1996

The Honorable Joseph Chachkin  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 226  
Washington, D.C. 20554

Harry F. Cole, Esquire  
Bechtel & Cole, Chartered  
1901 L Street, N.W., Suite 250  
Washington, D.C. 20036

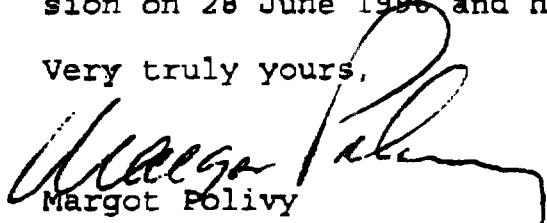
David Silberman, Esquire  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, N.W., Room 602  
Washington, D.C. 20554

Re: Rainbow Broadcasting Company  
File Nos. BMPCT-910625KP  
BMPCT-910125KE  
BTCCT-911129KT

Gentlemen:

This is to certify that this firm has completed its file search for documents as per agreement at the hearing session on 28 June 1996 and has found none.

Very truly yours,

  
Margot Polivy

cc: Bruce A. Eisen, Esquire

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 12th day of July, 1996, I have caused copies of the foregoing "Statement of Press Broadcasting Company, Inc. for the Record, Invitation for Response from Rainbow Broadcasting Company and Rainbow Broadcasting, Limited, or, in the Alternative, Petition to Enlarge Issues" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

The Honorable Joseph Chachkin  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W. - Room 226  
Washington, D.C. 20554  
(By Hand)

David Silberman, Esquire  
Stewart A. Block, Esquire  
Designated Trial Staff  
Office of the General Counsel  
Federal Communications Commission  
1919 M Street, N.W. - Room 602  
Washington, D.C. 20554  
(By Hand)

Bruce A. Eisen, Esquire  
Allen G. Moskowitz, Esquire  
Kaye, Scholer, Fierman, Hays & Handler LLP  
901 Fifteenth Street N.W.  
Suite 1100  
Washington, D.C. 20005-2327  
Counsel for Rainbow Broadcasting Company

Margot Polivy, Esquire  
Renouf & Polivy  
1532 16th Street, N.W.  
Washington, D.C. 20036  
Counsel for Rainbow Broadcasting, Limited

  
/s/ Harry F. Cole  
Harry F. Cole